

Brokers, are you commingling funds to help your clients???

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Commingling Funds are on the rise! Department Auditors have seen a significant increase in the commingling of funds by Brokers handling Trust Accounts. Over and over again - brokers rationalize they are “helping” clients by covering shortages in the owners’ accounts to cover NSF checks and to pay small maintenance and repair invoices. These brokers show little concern or recognition that by doing this they are violating statutes and rules. A review of ARS 32-2151 and 32-2174 shows that such activity is not legal. Brokers may rationalize they are violating statutes in order “to help their client,” but in reality the broker is breaking the law. This may be because they are afraid of losing a client; one that fails or refuses to leave a reserve on account to pay for unexpected maintenance, repairs or other expenses. Brokers cannot dip into other clients’ funds to “help” the client with no funds in reserve. Is commingling funds worth having your license suspended or revoked (ARS 32-2153(A)(16))? Brokers cannot abrogate their responsibility to one client by raiding the funds of another client. Brokers cannot pay their own operating expenses, commissions or other costs from trust funds.

Auditors are trained to scrutinize broker’s records, and will report any commingling violations they observe. It is a part of the Auditors job to protect the safety and interest of the public, the owners of the trust funds. If you are unsure about your record keeping, the Auditing Division suggests you visit the Arizona Department of Real Estate website azre.gov and 1) go to the Auditing section, 2) find (by category) trust accounts basics and trust accounts requirements. This section provides an overview, with examples and requirements, on how to handle these accounts. If you still have questions, e-mail the Auditing Division at auditing@azre.gov.